

Remarks/Arguments:

A. Status of Application

Claims 1-29 have been withdrawn or cancelled and claims 30-39 are under consideration. In the Office Action mailed December 3, 2003, claims 30-39 were rejected. Herein, claim 30 is amended and claims 35-39 are cancelled, leaving claims 30-34 under consideration.

B. Claim Amendments

Claim 30 has been amended herein. Specifically, claim 30 now recites a polynucleotide "consisting of" SEQ ID NO:1, wherein the polynucleotide is over-expressed in non-dormant apical buds.

C. Claim Rejections Under 35 U.S.C. § 101

Claims 30-39 were rejected under 35 U.S.C. § 101 for lacking a patentable utility. The applicant respectfully traverses this rejection and asserts that the invention as claimed does have patentable utility. The invention is a cloned polynucleotide sequence from tea plants which is part of the transcriptome, as determined by Northern Analysis (see FIGS. 19-20 and Example 7, pages 29-31). Because the applicant has established that the expression of this sequence is modulated in response to dormancy, the applicant has satisfied the burden of establishing a patentable utility as the sequence has a credible role in dormancy modulation, which confirms a well-established utility for the sequence.

The utility of the particular sequence under consideration (SEQ ID NO:1) is apparent when compared to the expression pattern of SEQ ID NO:4 of the application. While SEQ ID NO:1 is over-expressed in non-dormant buds, SEQ ID NO:4 is over-expressed in dormant buds. The applicants have set forth in the application that SEQ ID NO:1 has a unique role in modulating dormancy as compared to other sequences, such as SEQ ID NO:4. This aspect of the invention's utility is emphasized in amended claim 30 by reference to the over-expression of the sequence in non-dormant buds. Withdrawal of this rejection is respectfully requested.

D. Claim Rejections Under 35 U.S.C. § 112(1)

Claims 30-39 were rejected as containing subject matter which was not adequately described in the written specification. Specifically, the Office Action asserted that the "comprising" language encompassed undisclosed and undiscovered sequences. Claim 30 has been amended to recite a sequence "consisting of" the polynucleotide sequence of SEQ ID NO:1. Claims 31-34 depend directly from claim 30. Withdrawal of this rejection with respect to claims 30-34 is respectfully requested.

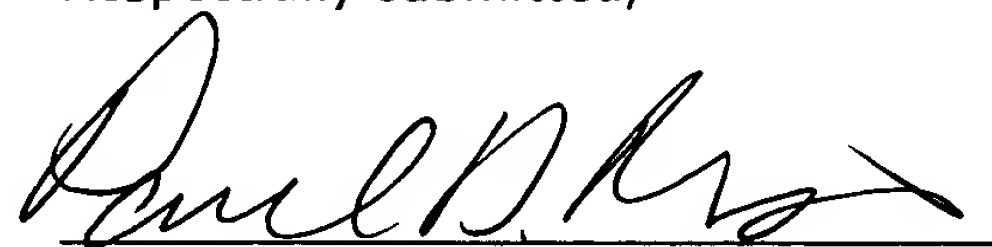
E. Claim Rejections Under 35 U.S.C. § 112 (2)

Claims 37-39 were rejected under 35 U.S.C. § 112 second paragraph as being indefinite. Not in acquiescence to the rejection, but merely to expedite prosecution, claims 37-39 have been cancelled, rendering this rejection moot.

F. Summary

In view of the foregoing amendments and remarks, the applicants submit that this application is in condition for allowance and respectfully request early and favorable notification to that effect. If it would expedite prosecution of this application, the Examiner is invited to confer with applicants' undersigned representatives.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Allan Ratner", is written over a horizontal line.

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Reply to Office Action of December 3, 2003

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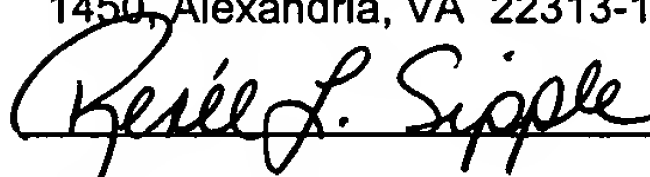
Dated: June 3, 2004

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